

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of:

Petition for Reconsideration of a Decision)	
by the Wireline Competition Bureau)	
for Craig County Public Schools, Virginia)	DA 03-383
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	
National Exchange Carrier Association)	CC Docket No. 97-21

Petition for Reconsideration of a Decision by the Wireline Competition Bureau

Craig County Public Schools
Entity Number: 126582
Form 471 Application number 241515
Funding Request Numbers 574283, 574100, 574122, 574171, 574243, 574255

In accordance with CFR Title 47 Part I, Section 1.106, Craig County Public Schools, New Castle, Virginia petitions the Wireline Competition Bureau (WCB) to reconsider its decision in the above captioned proceeding. Craig County requests the WCB to reconsider its conclusions with regard to provisions of the Children's Internet Protection Act (CIPA), WCB regulations, and Schools and Libraries Division (SLD) policies enacting the CIPA law.

Background

Craig County applied for Year Four E-Rate discounts on behalf of all county public schools and the school division administrative building during the Year Four

filing window. After thorough review by SLD staff, Craig County received a Funding Commitment letter from the SLD dated July 23, 2001 confirming discounts of 60 percent for telecommunications services and Internet access. Craig County filed two Forms 486 on September 26, 2001 with the SLD, confirming all schools under the administrative authority of the Craig County school board were receiving discounted services and that all entities were in compliance with new CIPA regulations. The Form 486 was filed prior to the October 28, 2001 deadline for certifying compliance with CIPA regulations.¹

Subsequently, Craig County filed a Form 486 on May 1, 2002 listing Funding Request Numbers (FRN) that had not been included in the initial Form 486 filings. In correspondence dated May 29, 2002 the SLD reduced funding for the FRN associated with the May 1 Form 486 filing to reflect a service start date of May 1, 2002 verses the original committed start date of July 1, 2001. This funding adjustment reduced funding for the affected FRN by approximately 83 percent.

In a Request for Review filed July 22, 2002, Craig County asked the WCB to overturn the SLD decision arguing that CIPA language specifically relates certification compliance to the “school” level verses the FRN level.² In an Order released February 7, 2003 the WCB denied the Craig County Request for Review.³ Based on the facts presented in our original Request for Review and language in the Act, Craig County requests the WCB to reconsider its decision and instruct SLD to restore full funding for all FRN cited herein.

¹ Letter from Adele Morris, Craig County Public Schools, to Federal Communications Commission, filed July 22, 2002 (Request for Review).

² Request for Review under “Discussion”

³ Wireline Competition Bureau Order, DA 03-383 adopted February 6, 2003 and released February 7, 2003 (Order)

Statement of Facts

The WCB Order bases its denial on several key points. First, requiring certification at the FRN level would “... ensure a streamlined implementation of the CIPA certification process...”⁴ Second, current regulations would give “...applicants maximum flexibility. This is because discounts for the schools and libraries universal service support mechanism are provided on the basis of individual FRNs rather than particular schools.”⁵ Third, the WCB asserts: “In addition, many FRNs are for telecommunications services only, to which CIPA does not apply.”⁶ Next, the WCB contends that compliance with language in the Act may cause administrative problems, citing its oft used mantra “...in light of the tens of thousands of applications each year, it would be administratively burdensome for SLD to attempt to determine which FRNs matched which schools or libraries for purposes of CIPA certification.”⁷ Finally, the WCB states that CIPA certification is not limited to the “school” level, but various levels of administration, which could include “...the school, school board, local education agency, or other administrative authority responsible for administration of the school.”⁸

Discussion

The key points addressed in the Order utterly fail to account for the WCB decision to base CIPA compliance at the FRN verses the school (or entity) level, as specifically required in the Act. Craig County will address each point in this discussion.

Streamlined Certification Process and Maximum Flexibility

⁴ Order at 9

⁵ Order at 9

⁶ Order at 9

⁷ Order at 9

⁸ Order at 11

The WCB asserts that current regulations both streamline the certification process and provide maximum flexibility to applicants. The WCB believes this is the case because funding is based on the FRN and a particular FRN may represent a single school or a number of schools.

This argument is not factual based on evidence. Funding notification for the E-Rate program is administered through a process known as the Funding Commitment Decision Letter (FCDL). The FCDL is issued to the entity which filed a Form 471 on behalf of itself or other eligible entities for discounted services, known as the “billed entity.” The FCDL lists individual decisions for each funding request (FRN). One FRN is associated with a Block 5 filed within a single Form 471. The Block 5 represents a single contract, or portions of a contract representing one or more schools, between the billed entity and a single vendor. A FCDL may contain one FRN or thousands. A single FRN may represent a single school, several schools or even thousands of schools and or libraries.

Under current CIPA regulations, a Form 486 must be filed for every FRN, certifying CIPA compliance multiple times. A single school may receive discount funding on behalf of itself, it may be part of one or more consortia, or it may be listed on a statewide application. A single school could be listed on hundreds of FRN. To comply with current regulations, schools are potentially required to timely certify compliance hundreds of times for a single school. If the school is a member of a consortium, the school, through the consortium lead must also certify CIPA compliance. These requirements hardly streamline the process for applicants and certainly do not provide “flexibility,” let alone “maximum” flexibility.

This process requires the SLD to verify CIPA compliance for each entity funded under all FRN. It requires the lead of consortia to collect and retain for five years a Form 479 from each member of the consortium. The Form 479 is a CIPA compliance form developed in response to CIPA regulations. The SLD currently has the means within its system to certify CIPA compliance at the FRN level from a single Form 486 filing. Once an entity has been certified CIPA compliant for a given funding year, that fact will be reflected in the SLD Database and linked to all other applicable FRN. No further verification will be necessary.

CIPA Does Not Apply to Telecommunications

The WCB argues that CIPA does not apply to telecommunications services. This argument is not germane to this decision and simply not true under current regulations. While the statement is true to the extent that applicants receiving only telecommunications services need not comply with provisions of CIPA; filing deadlines, certification requirements, and subsequent penalties for non-compliance are enforced on telecommunications only applicants as strenuously as non-telecommunications applicants. Under current regulation, all FRN, whether for telecommunications, internet access, or internal connections MUST have Form 486 filed within 120 days of the later of the start of service or the date of the FCDL. In the case of telecommunications service, the filing entity must positively certify on the form that it is receiving only telecommunications services and need not comply with CIPA. If the certification is postmarked past the deadline, SLD will adjust funding downward – even for telecommunications service. Minimum processing standards for the FCC Form 486 applicable to the funding requests at issue here state: “CIPA Certification: For Funding Year 4 and later Funding Years, Billed Entities must check at least one of the boxes

labeled (a) through (e) in Item (11).” Item 11 on the Form 486 is the CIPA certification item. For schools, school districts, school boards, or local education agencies the applicable boxes to check are Item (11), (a) through (c). Item (11), (c) must be checked if the applicant seeks only telecommunications services. The fact that minimum processing standards require a box in Item (11) to be checked even for applicants not required to comply with CIPA, confirms that telecommunications only applicants must take steps to indicate non-compliance or risk losing funding. This non-compliance certification must also be postmarked prior to the filing deadline. In fact, all FRN under appeal here were for services listed under the category of “telecommunications.” If the FCC determines that applicants receiving only telecommunications services need not comply with Form 486 filing deadlines or requirements to positively certify non-compliance, this appeal will be rendered moot. Should FCC make such determination, Craig County asks that full funding be restored for the FRN under appeal herein. A number of appeals now before the commission make such argument.

Administrative Burden Not an Issue

Often cited as a reason for request for review denial, the WCB asserts “...in light of the tens of thousands of applications each year, it would be administratively burdensome for SLD to attempt to determine which FRNs matched which schools or libraries for purposes of CIPA certification.” Contrary to this excuse, Craig County contends certifying CIPA compliance at the school level would significantly decrease the administrative burden on the SLD rather than increase it.

As stated above, the current SLD system can now automatically match Form 486 filings with schools associated with a particular FRN. Within the current system each school, school district, consortium, or library is assigned a unique number known as the

“entity number.” Applicants are required to list each entity number that will receive all or part of funding requested on a particular Block 5. During the application review process, SLD reviewers must verify the existence and appropriate discount level of each entity number listed on every Block 5. Within the SLD database this information is also available. When an entity files a Form 486, the SLD can simply cross reference the entity number with all FRN listing that entity thus, for CIPA compliance, all entities would be certified with the first Form 486 filing. A consulting firm familiar with the E-Rate program suggested the required software additions would take less than a person day to implement. Certainly this would be an economical method to facilitate SLD compliance with Children’s Internet Protection Act.

CIPA Certification Not Limited to “School” Level

Craig County is at a loss to understand the logic behind this line of reasoning by the WCB. While Craig County used the term “school” in the initial appeal, it is understood that the governance of the school is not limited to the principal of the “school,” but may rest with the school district, school board, or local education agency. This is simply a matter of semantics. It is understood by all parties involved with E-Rate that the school district, school board, or local education agency has total authority over a school. Under that reasoning, CIPA regulations acknowledge that fact by allowing the school district or local education agency to certify CIPA compliance for all schools under its direct jurisdiction on the Form 486, without requiring the school to file a Form 479 with the school district, school board, or local education agency. Additionally, the Form 471 discount application recognizes the role of school boards, school districts, and local education agencies as sovereigns over individual schools, allowing a discount application to be completed specifically by a school district in Block 1, Item 5.

By contrast an E-Rate “consortium” filing, where the consortium lead may not have governance authority over a member school, each school must certify CIPA compliance to the consortium lead by submitting to the consortium lead a properly completed Form 479. Craig County concedes for the purpose of CIPA compliance, the terms “school,” “school district,” “school board,” or “local education agency” are interchangeable. This fact however certainly cannot be the basis for denial of the Craig County Request for Review.

Conclusion

Craig County has demonstrated that CIPA compliance should not be limited to the FRN, but to the entity (school) requesting E-Rate discounts. Once a school, school district, school board, or local education agency has certified CIPA compliance with the SLD, ALL funding requests associated with that entity should, as a matter of law, be certified CIPA compliant. The intent of the law was crystal clear that schools receiving E-Rate discounted services, other than telecommunications, shall comply with CIPA provisions. It was never the intent to require schools to certify CIPA compliance dozens or hundreds of times each year. Compliance with federal law should be required of the SLD, the entity assigned to administer the E-Rate program and not ignored because of a perceived “administrative burden.”

We ask the WCB to reconsider its decision in this case and require schools to certify CIPA compliance only once per year. We ask the WCB restore funding to July 1, 2001 for the Funding Request Numbers here under consideration in light of the fact that the associated schools did timely comply with CIPA notification requirements. We ask that the WCB direct the SLD to process the Funding Requests under review as being filed before the October 28, 2001 deadline. We ask that this be done in service of the public

interest and ongoing credibility of the commission's regulatory authority over the E-Rate program.

Respectfully submitted on this _25_ day of February 2003,

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